

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

DAVID FLORES, JR. and
MATTHEW SIRMON
(on behalf of themselves
and all similarly situated individuals),

Plaintiffs,

V.

SOUTHERN RESPONSE
SERVICES, INC., BELFOR
USA GROUP, INC., ABC
INSURANCE COMPANY, and
XYZ INSURANCE COMPANY

Defendants.

* * * * *

NOTICE OF REMOVAL

NOW INTO COURT, through undersigned counsel, comes defendant, BELFOR USA Group, Inc. (“BELFOR”), and, pursuant to 28 U.S.C. § 1441 and § 1446, with a full reservation of rights and defenses, files this Notice of Removal of a civil action currently pending against it in the 14th Judicial District Court for the Parish of Calcasieu, State of Louisiana. BELFOR avers that this matter is hereby removed to this Court on the following grounds:

1.

On September 23, 2021, the plaintiffs filed this action, entitled *David Flores, Jr., Matthew Sirmon, et al. v. Southern Response Services, Inc. et al.*, Docket No. 2021-004092, in the 14th Judicial District Court for the Parish of Calcasieu, State of Louisiana. The plaintiffs’ “Class Action Petition for Damages” (the “Petition”) and all other state court pleadings filed to date are attached as Exhibit “1,” *in globo*.¹

2.

BELFOR was served, through its registered agent, CT Corporation, with the Citation and Petition on October 25, 2021. A copy of the Citation is attached as Exhibit “2.” BELFOR has not filed any responsive pleadings to the Petition.

3.

As of the date of BELFOR’s filing of this Notice of Removal, the state court record does not reflect any evidence of service of the Petition on Southern Response Services, Inc., BELFOR’s only specifically named co-defendant. Plaintiffs’ Petition also includes “ABC Insurance Company” and “XYZ Insurance Company” as innominate defendants, acknowledging that their exact names are unknown; these unknown, unnamed defendants have not been properly joined and, in any event, have also not been served with plaintiffs’ Petition. Accordingly, BELFOR need not obtain the consent of any of the other defendants identified in the Petition to remove this case to this Court. *See* 28 U.S.C. § 1446(b)(2)(A).

¹ As of the time of the filing of this Notice of Removal, Defendant was unable to obtain official copies of three filings including a Supplemental and Amending Petition filed on November 9, 2021. Defendant has not been served with this pleading but will supplement this filing pursuant to 28 U.S. Code § 1446(a) with any process, pleadings, and orders with which it is served, if any.

4.

This Notice of Removal is timely filed within thirty (30) days of the first receipt by a defendant, through service or otherwise, of a copy of the initial pleading setting forth the plaintiffs' claim for relief upon which this action is based. *See* 28 U.S.C. § 1446(b)(2)(B).

5.

The Petition alleges that the defendants deprived the plaintiffs and other similarly situated individuals of wages in violation of Louisiana law and the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* Ex. "1," *in globo*, Petition at, *e.g.*, ¶ 1. Plaintiffs also allege claims under the Federal Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693 *et seq.*, and "Regulation E," which plaintiffs assert "implements" the EFTA. *Id.* at ¶ 3.

6.

BELFOR is therefore removing this case pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), which provides this Court with original jurisdiction, as required by 28 U.S.C. § 1441(b). Further, plaintiffs' state law claims are all predicated on the same assertions of BELFOR's alleged violation of the FLSA, EFTA, and related regulations and pay requirements. Ex. "1," *in globo*, Petition at, *e.g.*, ¶ 2. As a result, plaintiffs' state law claims form part of the same "case or controversy," providing this Court with supplemental jurisdiction over plaintiffs' state law claims and rendering removal of the entire action proper. *See* 28 U.S.C. § 1367(a).

7.

The United States District Court for the Western District of Louisiana, Lake Charles Division, is the district court of the United States for the district and division embracing the state court in which plaintiffs' action is pending. 28 U.S.C. § 1441(a).

8.

BELFOR has complied with the procedural requirements for removal under 28 U.S.C. § 1446.

9.

Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders in the state court action are attached hereto. *See* Ex. "1," *in globo*.

10.

BELFOR will promptly give written notice of this Notice of Removal to plaintiffs.

11.

BELFOR will give written notice of this Notice of Removal to the Clerk of Court of the 14th Judicial District Court for the Parish of Calcasieu, State of Louisiana. BELFOR's Notice of Filing of Notice of Removal, which BELFOR is contemporaneously filing in the state court case, is attached hereto as Exhibit "3." *See* 28 U.S.C. § 1446(d).

WHEREFORE, defendant, BELFOR USA Group, Inc., prays that this matter be removed to the United States District Court for the Western District of Louisiana, Lake Charles Division, for further proceedings and disposition.

Respectfully submitted,

**BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, PC**

By: /s/ Christine M. White

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ATTORNEYS FOR BELFOR USA GROUP, INC.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on November 19, 2021, the foregoing Notice of Removal was served on counsel for the plaintiffs via electronic mail and by placing a copy of same in the United States Mail, properly addressed, and first-class postage prepaid.

/s/ Christine M. White

Christine M. White